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8 Attorney for Plaintiff  
9 Leo Orzhel

10 **UNITED STATES DISTRICT COURT**  
11 **Southern District of California**

12 LEO ORZHEL, an individual,  
13 vs.

14 ZWICKER and ASSOCIATES, P.C., a  
15 Massachusetts Professional  
16 Corporation,  
17 Defendant.

Case No.:

10 CV 0246

JM BLM

COMPLAINT FOR VIOLATION OF  
15 U.S.C. § 1692 et seq.

18 TO ZWICKER AND ASSOCIATES, P.C. AND ITS ATTORNEY OF RECORD:

19 **JURISDICTION**

20 1. Jurisdiction is conferred on this Court under 15 U.S.C.  
21 \$1692k(d) and 28 U.S.C. 1337.

22 2. This Court has both personal and subject matter  
23 jurisdiction to hear this case pursuant to Section 1337 of Title  
24 28 of the United States Code.

25 3. Venue lies in this District pursuant to Section 1391(b)  
26 of Title 28 of the United States Code.

27 **PARTIES**

28 4. Plaintiff incorporates by reference paragraphs 1  
through 3 as if each were alleged herein in full.

O.R.

5. At all times set forth in this Complaint, Plaintiff is and was a resident of San Diego County, California.

6. Plaintiff is informed and believes, and thereon alleges, that Defendant Zwicker and Associates, P.C. (hereinafter "Zwicker") is a professional corporation organized under the state of Massachusetts and doing business in the State of California.

## FACTS

7. Plaintiff incorporates by reference paragraphs 1 through 6 as if each were alleged herein in full.

8. Plaintiff's American Express credit card account with the last 4 digits of 5009 (hereinafter "Account") was transferred to Defendant on or around March 31, 2009 for collection.

9. On or about April 6, 2009, Plaintiff sent a fax to Defendant wherein Plaintiff informed Defendant that, among other things, Plaintiff was requesting that Defendant cease all communication with Plaintiff regarding the Debt pursuant to the Fair Debt Collection Practices Act.

10. On or about April 13, 2009 at approximately 7:03 PM, Plaintiff received a call to his office from Defendant in an attempt to collect a debt.

11. On or about April 16, 2009 at approximately 11:26 AM, Plaintiff received a call to his home from Defendant in an attempt to collect a debt.

12. On or about April 16, 2009 at approximately 11:28 AM, Plaintiff received a call to his office from Defendant in an attempt to collect a debt.

1        13. On or about April 28, 2009 at approximately 4:51 PM,  
2 Plaintiff received a call to his home from Defendant in an  
3 attempt to collect a debt.

4        14. On or about April 29, 2009 at approximately 2:56 PM,  
5 Plaintiff received a call to his home from Defendant in an  
6 attempt to collect a debt.

7        15. On or about April 29, 2009 at approximately 2:58 PM,  
8 Plaintiff received a call to his office from Defendant in an  
9 attempt to collect a debt.

10       16. On or about April 30, 2009 at approximately 6:13 PM,  
11 Plaintiff received a call to his home from Defendant in an  
12 attempt to collect a debt.

13       17. On or about April 30, 2009 at approximately 6:14 PM,  
14 Plaintiff received a call to his office from Defendant in an  
15 attempt to collect a debt.

16       18. On or about May 5, 2009 at approximately 6:17 PM,  
17 Plaintiff received a call to his home from Defendant in an  
18 attempt to collect a debt.

19       19. On or about May 5, 2009 at approximately 6:17 PM,  
20 Plaintiff received a call to his office from Defendant in an  
21 attempt to collect a debt.

22       20. On or about May 19, 2009 at approximately 7:22 PM,  
23 Plaintiff received a call to his home from Defendant in an  
24 attempt to collect a debt.

25       21. On or about May 26, 2009 at approximately 2:53 PM,  
26 Plaintiff received a call to his home from Defendant in an  
27 attempt to collect a debt.

1       22. On or about May 27, 2009 at approximately 6:27 PM,  
2 Plaintiff received a call to his home from Defendant in an  
3 attempt to collect a debt.

4       23. On or about May 27, 2009 at approximately 6:30 PM,  
5 Plaintiff received a call to his office from Defendant in an  
6 attempt to collect a debt.

7       24. On or about May 28, 2009 at approximately 12:15 PM,  
8 Plaintiff received a call to his cell phone from Defendant in an  
9 attempt to collect a debt.

10       25. As a result of Defendant's conduct, Plaintiff has  
11 incurred mental and emotional distress, nervousness, grief,  
12 anxiety, worry, mortification, shock, humiliation, stress, and  
13 indignity, which will continue until trial.

14                   **FIRST CAUSE OF ACTION**

15                   **Violation of 15 U.S.C. 1692 et seq.**

16       26. Plaintiff incorporates by reference paragraphs 1  
17 through 25 as if each were alleged herein in full.

18       27. Defendant is a debt collector as that term is defined  
19 in 15 U.S.C. 1692a(6).

20       28. Defendant was attempting to collect a consumer debt  
21 governed by 15 U.S.C. 1692 et seq.

22       29. Defendant's actions in communicating with Plaintiff  
23 violate 15 U.S.C. 1692c(c), 15 U.S.C. §1692d, and 15 U.S.C.  
24 §1692f.

25       30. Plaintiff is entitled to statutory damages under 15  
26 U.S.C. 1692k(a)(2).

27       \\\

1 31. Plaintiff is entitled to costs including reasonable  
2 attorneys fees in bringing this suit under 15 U.S.C.

3 1692k(a)(3).

4 WHEREFORE, Plaintiff prays as follows:

5 32. For statutory damages pursuant to 15 U.S.C. §1692k;

6 33. For actual damages according to proof;

7 34. For reasonable attorneys fees and costs pursuant to 15  
8 U.S.C. §1692k(a)(3); and

9 35. For such further relief as the court may deem proper.

10  
11 Dated: January 28, 2010

Respectfully Submitted,  
AVATAR LEGAL, P.C.

12  
13 BY: 

14 Jason L. Jones  
15 Attorney for Plaintiff  
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JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Leo Orzhel

**DEFENDANTS**

Zwicker and Associates, P.C. JAN 29 PM 3:55

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

BY

Attorneys (If Known)

10 CV 0246

JM BLM

**(c) Attorney's (Firm Name, Address, and Telephone Number)**

Jason Jones, Esq., Avatar Legal, P.C., 12526 High Bluff Drive, Ste 300, San Diego, CA 92130. Phone: 858-793-9800

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 1692 et seq.

Brief description of cause:  
Violations of Fair Debt Collection Practices Act**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/29/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

9691

AMOUNT

350

APPLYING IFP

JUDGE

MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS009691  
Cashier ID: sramirez  
Transaction Date: 01/29/2010  
Payer Name: AVATAR LEGAL

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CIVIL FILING FEE  
For: ORZHEL V. ZWICKER  
Case/Party: D-CAS-3-10-CV-000246-001  
Amount: \$350.00

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CHECK  
Check/Money Order Num: 1314  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.